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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11 Case No.:
	:	
LEHMAN BROTHERS HOLDINGS INC., <i>et al.</i> ,	:	08-13555 (JMP)
	:	
Debtors.	:	(Jointly Administered)
-----X	:	
MASSACHUSETTS WATER	:	
RESOURCES AUTHORITY,	:	
	:	
Interpleader Plaintiff,	:	
	:	
vs.	:	Adversary Proceeding No.
	:	
LEHMAN BROTHERS SPECIAL	:	
FINANCING INC. and LEHMAN BROTHERS	:	
DERIVATIVE PRODUCTS INC.,	:	
	:	
Interpleader Defendants.	:	
-----X	:	

INTERPLEADER COMPLAINT
OF MASSACHUSETTS WATER RESOURCES AUTHORITY

Preliminary Statement

The Interpleader Plaintiff Massachusetts Water Resources Authority (“MWRA”) hereby seeks, pursuant to Fed. R. Civ. P. 22 and 67, as made applicable by Fed. R. Bankr. P. 7022 and 7067, respectively, (i) to deposit with this Court the sum of \$3,567,511.87, constituting the amount owed to MWRA’s Lehman Brothers counterparty upon MWRA’s termination of a derivative swap agreement, plus accrued interest until the time of deposit with the Court (the “Termination Payment”); and (ii) to have this Court determine which of the two Interpleader Defendants is entitled to the Termination Payment.

It is unclear which of the Interpleader Defendants ultimately is entitled to the Termination Payment, among other reasons because one of them assigned the derivative swap agreement to the other shortly before they both filed for bankruptcy. This adversary proceeding involves a swap agreement originally entered into between MWRA and Lehman Brothers Derivative Products Inc. (“LBDP”) dated March 22, 2000, which was amended and assigned by LBDP to Lehman Brothers Special Financing Inc. (“LBSF”) effective September 16, 2008. This assignment occurred immediately after Lehman Brothers Holdings Inc. (“LBHI”), the indirect parent of LBDP and LBSF, filed a Chapter 11 petition on September 15, 2008, and just a few weeks before LBSF and LBDP filed Chapter 11 petitions on October 3, 2008, and October 5, 2008, respectively. MWRA terminated the derivative swap contract as amended pursuant to its terms on November 24, 2008. That termination resulted in a payment being owed to MWRA’s Lehman Brothers counterparty. This adversary proceeding is brought to determine whether LBSF or LBDP is the Lehman Brothers entity ultimately entitled to the

Termination Payment. Interpleader Plaintiff MWRA makes no claim to the Termination Payment that it proposes to deposit with this Court.

Parties

1. Interpleader Plaintiff MWRA is a body politic and corporate and a public instrumentality of the Commonwealth of Massachusetts. MWRA was created under the provisions of chapter 372 of the Massachusetts Acts of 1984 to provide water supply services and sewage transport and treatment services to a service area generally comprised of cities and towns situated in eastern Massachusetts. MWRA maintains its principal place of business in Boston, Massachusetts.

2. Interpleader Defendant LBSF is a corporation organized and incorporated under the laws of the State of Delaware with a principal place of business at 745 Seventh Avenue, New York City, New York 10019. LBSF is an affiliate of LBHI. LBSF filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in this Court on or about October 3, 2008.

3. Interpleader Defendant LBDP is a corporation organized and incorporated under the laws of the State of Delaware with a principal place of business at 745 Seventh Avenue, New York City, New York 10019. LBDP is an affiliate of LBHI. LBDP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in this Court on or about October 5, 2008.

Jurisdiction and Venue

4. This adversary proceeding is a civil proceeding arising in or related to a case under title 11 of the United States Code within the meaning of 28 U.S.C. § 1334(b). It is properly brought under Fed. R. Bankr. P. 7001(2) and (7).

5. This Court has jurisdiction of this adversary proceeding under 28 U.S.C. §§ 157 and 1334.
6. This adversary proceeding constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).
7. Venue of this adversary proceeding is proper in this District under 28 U.S.C. § 1409(a) as the bankruptcy cases of both Interpleader Defendants are pending in this judicial district.

Facts

8. On or about March 22, 2000, MWRA issued up to \$270,600,000 of variable rate Multi-Modal Subordinated General Revenue Refunding Bonds (the “Bonds”).
9. In connection with the issuance of the Bonds, MWRA entered into two interest rate swap agreements, having two distinct successive terms and notional amounts, to hedge against interest rate volatility that might be experienced during the period that the Bonds remained outstanding.
10. Each of the two interest rate swap agreements was documented by a standard form of International Swap Dealers Association Master Agreement (the “Master Agreement”) and a separate Schedule, which together set forth the substantive terms of the swap agreements. Each of the swap agreements was further documented by a written Confirmation which summarized its central business terms.
11. MWRA entered into one such interest rate swap agreement in the initial notional amount of \$270,600,000 with Lehman Brothers Financial Products Inc. (the “LBFP Swap”). The LBFP Swap was dated as of March 22, 2000 and was to remain in

effect for a period of approximately thirty years terminating on August 1, 2030. On or about October 28, 2008, MWRA terminated the LBFP Swap on account of LBFP filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code.

MWRA made a termination payment to LBFP in connection with this swap agreement on or about November 3, 2008.

12. MWRA entered into a second interest rate swap agreement in the initial notional amount of \$70,400,000 with LBDP (the “LBDP Swap”). The LBDP Swap was dated as of March 22, 2000 and was intended to operate for a term beginning on August 1, 2030 and terminating on August 3, 2037. The LBDP Swap was amended on May 29, 2008, to reflect that the LBDP Swap was no longer an insured transaction. Copies of the Master Agreement, the Schedule, the Confirmation and the May 29, 2008 amendment for the LBDP Swap are attached as **Exhibits A, B, C and D**, respectively. The LBDP Swap is the swap agreement at issue in this adversary proceeding.

13. On or about September 15, 2008, LBHI filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code. This constituted a “Trigger Event” under the LBDP Swap. The occurrence of such a Trigger Event initiated a process that would result in imminent termination of the LBDP Swap.

14. On or about September 16, 2008, a representative of Lehman Brothers proposed to MWRA that the LBDP Swap be amended and assigned to LBSF to avoid the termination of the LBDP Swap.

15. Within several days, LBDP, LBSF and MWRA entered into an Assignment and Amendment Agreement, effective September 16, 2008 (the “Assignment,” a copy of which is attached as **Exhibit E**). The Assignment recited that,

“upon a termination of the [LBDP Swap] on the date hereof [MWRA] would owe a payment to LBDP.” In other words, as of September 16, 2008, the LBDP Swap was “in the money” to LBDP.

16. The Assignment further recited that “the parties to [the LBDP Swap] and LBSF have agreed that LBDP shall transfer the [LBDP Swap] ... to LBSF to avoid the Trigger Termination of the [LBDP Swap].” By avoiding the Trigger Termination, the Assignment obviated the need for MWRA to make a termination payment to LBDP, which would have been due within at most eleven business days.

17. The Assignment amended the LBDP Swap by eliminating the provisions regarding Trigger Events, and replacing all references to LBDP with LBSF. (The LBDP Swap as amended as of September 16, 2008 is hereinafter referred to as the “LBSF Swap.”)

18. MWRA entered into the Assignment in good faith relying, among other things, upon the written representations in paragraph 5 of the Assignment that each party had the power to execute and deliver the Assignment; that the person signing the Assignment on behalf of each party was duly authorized to do so; that the execution, delivery and performance of the Assignment did not violate or conflict with any applicable law; and that the obligations undertaken in the Assignment were the legal, valid, and binding obligations of the respective parties enforceable in accordance with their terms, subject, however, to “applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors’ rights generally.”

19. Notwithstanding the Assignment, LBSF’s subsequent filing of a voluntary petition for relief under chapter 11 of title 11 of the United States Code on October 3,

2008 constituted an Event of Default under the LBSF Swap. This allowed for early termination of the LBSF Swap by MWRA.

20. On or about November 24, 2008, MWRA exercised its right to terminate the LBSF Swap. Notice of that termination has been delivered to LBSF in accordance with the terms of the Master Agreement and a copy also has been delivered to LBDP. A copy of MWRA's notice of termination of the LBSF Swap is attached hereto as **Exhibit F**.

21. In accordance with the applicable termination provisions of the LBSF Swap, MWRA determined the gross termination amount for the LBSF Swap to be \$3,594,000. After reducing that amount by permissible deductions under the terms of the LBSF Swap, and adding interest, MWRA deposited the net sum of \$3,567,511.87 into a segregated, interest-bearing account with First American Funds Government Obligations Fund (Class D shares), Account Number - 106464-002, to be held for the benefit of LBSF or LBDP, with the expectation that that amount plus any accrued interest will be deposited with the Court pending the Court's determination of which Lehman entity ultimately is entitled to receive said amount.

Claim for Relief

22. MWRA repeats and incorporates by reference paragraphs 1-21 hereof.

23. MWRA has become aware that creditors of LBHI and/or its affiliates have raised issues regarding transactions among various Lehman Brothers affiliates in the period surrounding the filing of their various bankruptcy petitions. Given that the LBDP Swap was assigned by LBDP to LBSF effective one day after LBHI filed its bankruptcy petition and only seventeen to nineteen days before LBSF and LBDP filed their

bankruptcy petitions, and that the LBDP Swap was “in the money” to LBDP at the time of the Assignment, the possibility exists that LBDP and/or creditors of LBDP may take the position that the LBDP bankruptcy estate rather than the LBSF bankruptcy estate should be the ultimate beneficiary of the Termination Payment. For this reason, and to eliminate any possibility of double liability, MWRA seeks to have the Termination Payment deposited with this Court and to have this Court determine which Lehman Brothers entity is entitled to the Termination Payment.

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WHEREFORE, MWRA as Interpleader Plaintiff respectfully asks this Court to enter the following relief upon this Interpleader Complaint:

- (1) issue an Order authorizing MWRA to deposit with the Court the Termination Payment;
- (2) determine whether the Termination Payment is the property of the estate of the Debtor LBSF or the estate of the Debtor LBDP; and
- (3) enter such other or further relief as deemed appropriate by this Court.

Dated: New York, New York
December 2, 2008

Respectfully Submitted,

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